

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	MULTI-DISTRICT LITIGATION
ASBESTOS PRODUCTS	:	
LIABILITY LITIGATION	:	NO. MDL 875

DAVID COSEY, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	NO. 99-cv-0164
E.D. BULLARD, et al.	:	(U.S.D.C. Mississippi Southern)

<u>LOWERY, GLENN E., et al.</u>	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	NO. 08-cv- <u>61542</u>
E.D. BULLARD, et al.	:	(U.S.D.C. Pennsylvania Eastern)

FILED
SEP 18 2008
By MICHAEL E. KUNZ, Clerk
Den. Clerk

MEMORANDUM AND ORDER

A civil action concerning asbestos products liability was filed in the United States District Court for the Southern District of Mississippi and was properly docketed as 99-cv-0164 in that court. This civil action was brought by 3,469 individual plaintiffs (the lead plaintiff was David Cosey).

On January 2, 2008, this aforesaid civil action was transferred from the United States District Court for the Southern District of Mississippi to this court as part of the multi-district asbestos products liability litigation known as MDL 875. While all of the plaintiffs claim to suffer from asbestos-related diseases, their claims clearly do not arise out of the same transaction, occurrence, or series of transactions or occurrences, and are therefore not related within the

meaning of Federal Rule of Civil Procedure 20.¹ Moreover, severance is appropriate as these individual claims will each require separate trials, as they may involve different witnesses, different evidence, and different legal theories of recovery and defense, which could lead to confusion of the jury.²

Accordingly, on January 2, 2008, in order to facilitate the efficient administration of justice,³ this court ordered that this matter be severed into 3,469 separate civil actions with 3,469 separate civil action numbers. At the present time, it is now crucial for this court to address two relevant issues:

- * The need for the filing of a severed and amended complaint in each of the aforesaid new civil actions; and,
- * The need to assess filing fees in each of these cases pursuant to 28 U.S.C. §1914(a) (except for the new civil action representing the claims of David Cosey, the lead plaintiff in the aforesaid matter originally filed in the United States District Court for the Southern District of Mississippi).

28 U.S.C. §1914(a), in its entirety, states:

“The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5.”

This court has noted that

¹In Re: Avandia Marketing, Sales Practices and Products Liability Litigation, MDL No. 1871 (ED Pa. July 21, 2008); DirectTV v. Weiss, 03-cv-3277 (ED Pa. August 5, 2003); DirectTV v. Citrigno, 03-cv-3282 (ED Pa. October 27, 2003); Myers v. Consolidated Rail Corporation, 96-cv-6579 (ED Pa. October 17, 1996). Accord, In Re: Diet Drugs, MDL 1203, 325 F.Supp. 2d 540 (ED Pa. 2004).

²Accord, United States v. 1,071.08 Acres of Land, Yuma & Mohave Counties, Arizona, 564 F.2d 1350 (9th Cir. 1977); and, Manufacturers Bank & Trust Company of St. Louis v. Transamerica Insurance Company, 568 F.Supp. 790 (ED Mo. 1983).

³Accord, In Re: Diet Drugs, MDL 1203, 325 F.Supp. 2d 540 (ED Pa. 2004).

“28 U.S.C. §1914(a) requires the clerk to obtain a ... filing fee from parties ‘instituting a civil action, suit or proceeding whether by original process, removal or otherwise.’ By including the words *proceeding* and *otherwise*, Congress has given the statute a very broad reach. While it is true that the plaintiffs started out with one civil action, this court has now compelled the filing of separate complaints for each of the plaintiffs. The filing of a separate complaint constitutes the institution of a civil action or proceeding- if not by original process or removal, then *otherwise* (emphasis added in the original).”⁴

This interpretation of the statute supports the payment of a filing fee for each separate complaint, and has been supported by the United States Court of Appeals for the Third Circuit.⁵ There are two federal policies which support this interpretation of this statute.⁶

- * The filing fee requirement is a revenue raising measure; and,
- * The filing fee requirement is a threshold barrier, albeit a modest one, against the filing of frivolous or otherwise meritless lawsuits.

Accordingly, this twelfth day of September, 2008, it is hereby **ORDERED** as follows.

1. Within sixty (60) days, each individual plaintiff and that plaintiff’s spouse, if a party, or the estate’s administrator, shall file one “Severed and Amended Complaint,” which shall be captioned with the aforesaid new civil action number. Failure to comply with this section of the instant Order may result, upon motion by any concerned defendant, in the dismissal of that specific plaintiff’s civil action with prejudice, pursuant to Federal Rule of Civil Procedure 41.

2. Each Severed and Amended Complaint shall contain the specific claims asserted by that individual plaintiff and that plaintiff’s spouse, if a party, or the estate’s administrator,

⁴In Re: Diet Drugs, MDL 1203, 325 F.Supp. 2d 540 (ED Pa. 2004).

⁵U.S. ex rel LaCorte v. Smith Kline Beecham, 149 F.3d 227 (3rd Cir. 1998).

⁶In Re: Diet Drugs, MDL 1203, 325 F.Supp. 2d 540 (ED Pa. 2004).

against any defendant named in the Severed and Amended Complaint. Failure to comply with this section of the instant Order may result, upon motion by any concerned defendant, in the dismissal of that specific plaintiff's civil action with prejudice, pursuant to Federal Rule of Civil Procedure 41.

3. Each Severed and Amended Complaint shall be submitted to the Clerk of Court on disk in portable document format (pdf), along with a courtesy paper copy of the complaint, for filing. Pursuant to Local Rule of Civil Procedure 5.1.2, all attorneys shall apply for a signature code by completing and filing with the Clerk of Court a Validation of Signature Form, a copy of which is attached hereto. An attorney's signature code shall be entered on the signature line of the courtesy copy of the Severed and Amended Complaint for the purpose of signature validation pursuant to Federal Rule of Civil Procedure 11.

4. Absent prior leave of court, a Severed and Amended Complaint shall contain only those claims pleaded in the original multi-plaintiff action or some subset of those claims. Failure to comply with this section of this Order may result, upon motion by any concerned defendant, in the dismissal of the affected claims with prejudice.

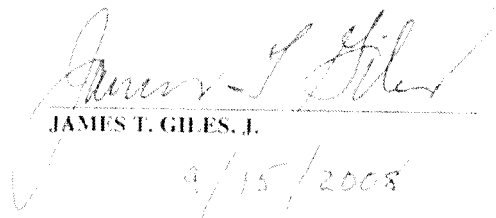
5. Absent prior leave of court, a Severed and Amended Complaint shall not name any new defendants not named in the original multi-plaintiff action. Claims made against any such "new defendants" may result, upon motion by any such "new defendant," in the dismissal of the affected claims with prejudice.

6. Claims against any defendant who is named in the original action, but who is not named as a defendant by the specific plaintiff in any one specific Severed and Amended Complaint may result in the dismissal, sua sponte, of that specific plaintiff's civil action with prejudice.

7. Except for David Cosey (the lead plaintiff in the aforesaid matter originally filed in the United States District Court for the Southern District of Mississippi), each plaintiff who files a Severed and Amended Complaint shall remit to the Clerk of Court a filing fee in the amount of \$350.00, pursuant to 28 U.S.C. §1914(a). A specific plaintiff's failure to comply with this section of the instant Order may result in the dismissal, sua sponte, of that specific plaintiff's civil action with prejudice.

8. Each Severed and Amended Complaint must be served by the concerned plaintiff as required by Federal Rule of Civil Procedure 5.

BY THE COURT:



JAMES T. GILES, J.
9/15/2008

Entered and copies mailed to attorneys listed on attached sheet.

Cosey v. E.D. Bullard, et al.
(E.D. P.A. 08-cv-60000)

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